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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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8791 7590 01/23/2008 BLAKELY SOKOLOFF TAYLOR & ZAFMAN 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040				
EXAMINER				
RYAN, PATRICK A				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/676,419

**Applicant(s)**

CASE, MICHAEL L.

**Examiner**

PATRICK A. RYAN

**Art Unit**

4126

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-38 is/are rejected.  
7) ☒ Claim(s) 34, 35 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This is the First Action based on the 10/676419 application filed September 30, 2003. As originally filed, Claims 1-38 are presented for examination.

#### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 13-16 and 30-35 are rejected under 35 U.S.C 101 because the claimed invention is directed to non-statutory subject matter. Claims 13-16 and 30-35 are directed towards an "article comprising a machine-readable medium having stored thereon data representing instructions which, when executed by a machine, cause the machine to perform operations..." Applicant has defined machine-readable medium in Paragraph [0063], and discloses: "the present invention may also be downloaded as a computer program product, wherein the program may be transferred from a remote computer to a requesting computer by way of data signals embodied in a carrier wave or other propagation medium via a communication link." The machine-readable medium, as defined by the Applicant's specification, has the ability to transfer a computer program product by way of a data signal or a carrier wave and is therefore not patentable subject matter because the machine is only transferring data from one location to another. In addition, data structures not claimed as embodied in a computer-

readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760. Appropriate correction is required.

### ***Claim Objections***

4. Claims 16, 34, and 35 objected to because of the following informalities: Claim 16 is directed toward a method, as dependent from Claim 13, but Claim 13 is directed toward an article of manufacture. The Examiner has interpreted this to be a typo and for the purpose of this Office Action, Claim 13 will be analyzed as directed towards an article of manufacture.

Claims 34 and 35 are drawn toward an apparatus, but are stated as dependent upon Claim 30, which is an article of manufacture. The Examiner has interpreted this to be a typo and for the purpose of this Office Action, Claims 34 and 35 have been analyzed as dependent from Claim 33. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 12, 13, 17, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Landis et al. (US Patent 5,561,461) hereinafter "Landis."

7. In regards to Claim 1, Landis teaches a method comprising: receiving a plurality of video signals that include time-of-day information ("[Extended Data Service or] EDS data may be identified by "scanning" all channels", as disclosed in Col. 5 Lines 44-49); evaluating the received signals for time-of-day information conflicts ("extracted data is tested by controller 110", as disclosed in Col. 5 Lines 50-55); extracting the time-of-day information from the video signals in accordance with the evaluation (data slicer 145 is used to extract EDS time of day data, as described in Col. 5 Lines 49-51); determining a time-of-day using the extracted information in accordance with the evaluation (time difference method shown in Fig. 2, as described in Col. 6 Lines 15-36); and setting a system clock based on the determined time of day (step 270 of Fig. 2, as described in Col. 6 Lines 30-34).

8. In regards to Claim 2, Landis teaches the method of Claim 1, wherein evaluating comprises selecting one of the video signals (tuning information for a signal containing EDS data is saved in RAM 116, as disclosed in Col. 5 Lines 51-65) and wherein extracting comprises extracting the time-of-day information from the selected signal (storage of "eds\_hours" and "eds\_minutes", as disclosed in Col. 6 Lines 4-14).

9. In regards to Claim 12 Landis teaches the method of Claim 1, wherein receiving comprises: demodulating a plurality of video signals ("Tuner assembly 102 selects and amplifies a particular RF signal", as disclosed in Col. 3 Lines 20-27); decoding the demodulated video signals ("DATA SLICER 145 decodes the data component of the television signal..." which includes EDS time of day data, as disclosed in Col. 4 Lines 40-43); analyzing the decoded video signals to determine the video signals that contain

time-of-day information (determination if EDS data is included in the video signal using the FIELD identifier, as disclosed in Col. 4 Lines 47-53).

10. In regards to Claim 13, Landis teaches an article comprising a machine-readable medium having stored thereon data representing instructions (microcomputer 110, as disclosed in Col. 3 Lines 38-67 and Col. 4 Lines 1-18) which, when executed by a machine cause the machine to perform the method of Claim 1.

11. In regards to Claim 17, Landis teaches an apparatus comprising a plurality of tuners (tuner assembly 102 connected to tuner control unit 104, as described in Col. 3 Lines 19-27 and Col. 5 Lines 46-50), a plurality of decoders (DATA SLICER 145, as disclosed in Col. 4 Lines 33-46), and a processor (microcomputer 110, as disclosed in Col. 3 Lines 38-67 and Col. 4 Lines 1-18) to execute the method of Claim 1.

12. In regards to Claim 20, Landis teaches an apparatus comprising a plurality of tuners to receive wireless video signals modulated on a carrier frequency (RF input terminal 100 connected to tuner controller unit 104, as described in Col. 3 Lines 19-27 and Col. 5 Lines 46-50), a plurality of decoders (DATA SLICER 145, as disclosed in Col. 4 Lines 33-46), and a processor (microcomputer 110, as disclosed in Col. 3 Lines 38-67 and Col. 4 Lines 1-18) to execute the method of Claim 1.

13. Claims 24 through 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Shin et al. (US Patent 6,169,580) hereinafter "Shin."

14. In regards to Claim 24, Shin teaches a method comprising: receiving a video stream (tuner 10 of Fig. 2, as described in Col. 1 Lines 36-45); determining the source

of the video stream (microcomputer 15 checks the broadcast signal, as disclosed in Col. 4 Lines 54-58); and modifying time-of-day information in the video stream based on the determined source (as disclosed in Col. 4 Lines 35-67).

15. In regards to Claim 25, Shin teaches a method wherein modifying comprises removing time-of-day information from the video stream if the source is previously recorded video (as disclosed in Col. 5 Lines 25-40).

16. In regards to Claim 26, Shin teaches a method wherein modifying comprises changing the time-of-day information to a current time if the source is previously recorded video (as disclosed in Col. 5 Lines 25-40).

17. In regards to Claim 27, Shin teaches a method wherein changing the time-of-day information to a current time comprises applying the time-of-day of a system clock (as disclosed in Col. 4 Lines 41-50).

18. In regards to Claim 28, Shin teaches a method wherein modifying comprises checking the time-of-day information against a system clock (time difference data, as disclosed in Col. 4 Lines 42-50) and changing the time-of-day information to the system clock time (receiving region time, as disclosed in Col. 4 Lines 42-50).

19. In regards to Claim 29, Shin teaches a method wherein modifying comprises passing the time-of-day information in the video stream unchanged if the source is a broadcast source (Shin's method would inherently perform this function if the user was in the same time-zone as the broadcast signal because the time difference measurement would be zero).

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20. In regards to Claim 30, Shin teaches an article comprising a machine-readable medium having store thereon data representing instructions (microcomputer 15, as disclosed in Col. 4 Lines 20-50) which, when executed by a machine cause the machine to perform the method of Claim 24.

21. The limitations of Claim 31 have been addressed with reference to Claim 30 and Claim 25.

22. The limitations of Claim 32 have been addressed with reference to Claim 30 and Claims 27 and 28.

23. In regards to Claim 33, Shin teaches an apparatus comprising a tuner (tuner 10, as disclosed in Col. 3 Lines 55-63) and a processor (microcomputer 15, as disclosed in Col. Col. 4 Lines 20-50) which performs the method of Claim 24.

24. The limitations of Claim 34 have been addressed with reference to Claim 33 and Claims 25.

25. The limitations of Claim 35 have been addressed with reference to Claim 33 and Claims 27 and 28.

26. In regards to Claim 36, Shin teaches an apparatus comprising a tuner to receive a video stream from a video recorder (program reserving and recording, as disclosed in Col. 5 Lines 9-24), and a processor (microcomputer 15, as disclosed in Col. Col. 4 Lines 20-50), which performs the method of Claim 24.



27. The limitations of Claim 37 have been addressed with reference to Claim 36 and Claims 25.

28. The limitations of Claim 38 have been addressed with reference to Claim 36 and Claims 27 and 28.

***Claim Rejections - 35 USC § 103***

29. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

30. Claims 3, 4, 6 - 9, 11, 14 - 16, 18, 19, 21, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landis in view of Nishigaki (US Patent 5,812,209).

31. In regards to Claims 3, 7, and 8, Landis teaches the method of selecting, extracting, and setting the time of day information from a video signal, but does not teach a method of selecting a second video signal if the first signal becomes unavailable.

In a similar field of invention, Nishigaki teaches a television device capable of receiving a number of broadcast signals and using data within the broadcast signals to adjust the time of day of a system clock (shown in Fig. 4). In addition, Nishigaki teaches a method of evaluating additional broadcast signals if the first signal becomes unavailable (represented by the 'N' path of S14 in Fig. 4A). A second signal is then checked by incrementing the channel position number (as shown in S20 of Fig. 4A).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combined the channel time extraction method of Landis with the multiple channel verification method of Nishigaki so that the time of day verification method is continually performed and updated, so that a user is not required to manually in put the time of day if the first time of day signal is lost (as disclosed by Nishigaki in Col. 2 Lines 28-48).

32. In regards to Claim 4, Landis teaches the method of Claim 1, wherein the received signals are evaluated for time of day conflicts, by does not teach that the received signals are sorted in a priority order.

In a similar field of invention, Nishigaki teaches a method of prioritizing broadcast signals that contain time of day information. Nishigaki further discloses that: "the priority order may be arranged based on criteria such as the content of the time information, accuracy of the time information, transmission time schedule of the time information, and broadcasting station operators" (as disclosed in Col. 5 Lines 65-67 and Col. 6 Lines 1-7). The incoming broadcast signals are then sorted into a priority order based on an assigned priority number (as described in Col. 6 Lines 38-42). Once the priority list is created, the time of day information is extracted from the channel with the highest priority number and is used to set the system clock (as disclosed in Col. 6 Lines 43-51).

It would have been obvious to one of ordinary skill in the art at the time of invention to combined the channel time extraction method of Landis with the priority ordering method of Nishigaki in order to obtain the most accurate time of day

information among a plurality of broadcast stations that provide time of day information. Nishigaki's method would eliminate the need for a user to select the most accurate time of day data by allowing the system to automatically select the most accurate time data for the user (as disclosed by Nishigaki in Col. 2 Lines 28-48).

33. In regards to Claims 6 and 11, Landis teaches the method of selecting, extracting, and setting the time of day information from a video signal, but does not teach wherein sorting comprises assigning an indication of a start time for each video signal or wherein evaluating comprises determining a duration of the availability of each video signal and excluding video signals that have been available for an insufficient duration from determining the time of day.

In a similar field of invention, Nishigaki teaches a method of prioritizing broadcast signals that contain time of day information. Nishigaki further discloses that: "the priority order may be arranged based on criteria such as the content of the time information, accuracy of the time information, transmission time schedule of the time information, and broadcasting station operators" (as disclosed in Col. 5 Lines 65-67 and Col. 6 Lines 1-7). The incoming broadcast signals are then sorted into a priority order based on an assigned priority number (as described in Col. 6 Lines 38-42). The Examiner interprets the "transmission time schedule of the information" (as disclosed by Nishigaki) to include the start and stop time of the transmitted video signal. The start and stop time could therefore represent the duration of availability for the time of day information. Using Nishigaki's priority method, the video signal with the greatest duration of availability would then be given the highest priority.

It would have been obvious to one of ordinary skill in the art at the time of invention to combined the channel time extraction method of Landis with the priority ordering method of Nishigaki in order to obtain the most accurate time of day information among a plurality of broadcast stations that provide time of day information. Nishigaki's method would eliminate the need for a user to select the most accurate time of day data by allowing the system to automatically select the most accurate time data for the user (as disclosed by Nishigaki in Col. 2 Lines 28-48).

34. In regards to Claim 9, Landis teaches the method of selecting, extracting, and setting the time of day information from a video signal, but does not teach a method of determining a time-of-day comprises averaging values for the time-of-day indicated by the time-of-day information of at least two different video signals.

In a similar field of invention, Nishigaki teaches a method of interpolating the correct time information in an area where a television device is used (as disclosed in Col. 2 Lines 60-67 and Col. 3 Lines 22-29). The Examiner takes the position that an average of a set of data would be an obvious variant of an interpolation of a set of data.

It would have been obvious to one of ordinary skill in the art at the time of invention to combined the channel time extraction method of Landis with the time interpolation method of Nishigaki in order to obtain the most accurate time of day information among a plurality of broadcast stations that provide time of day information. Nishigaki's method would eliminate the need for a user to select the most accurate time of day data by allowing the system to automatically select the most accurate time data for the user (as disclosed by Nishigaki in Col. 2 Lines 28-48).

35. The limitations of Claim 14 have been addressed with reference to Claim 13 and Claim 8.

36. The limitations of Claim 15 have been addressed with reference to Claim 13 and Claim 6.

37. The limitations of Claim 16 have been addressed with reference to Claim 13 and Claim 9.

38. The limitations of Claim 18 have been addressed with reference to Claim 17 and Claim 9.

39. The limitations of Claim 19 have been addressed with reference to Claim 17 and Claim 6.

40. The limitations of Claim 21 have been addressed with reference to Claims 20, 2, and 3.

41. The limitations of Claim 23 have been addressed with reference to Claim 20 and Claim 9.

42. Claims 5, 10, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landis in view of Nishigaki and in further view of Duffield et al (US Patent 5,617,146) hereinafter "Duffield".

43. In regards to Claims 5 and 22, Landis teaches a method of selecting, extracting, and setting the time of day information from a video signal and Nishigaki teaches a method of prioritizing broadcast signals that contain time of day information, but the

combination of these methods does not teach applying a user-defined preference list to the video signals.

In a similar field of invention, Duffield teaches a method that allows a user to decide whether or not to use the EDS data for each EDS packet contained in a given video signal (IGNORE\_EDS function, as disclosed in Col. 5 Lines 45-55). Duffield's method involves storing a list of ignored channels in memory (as disclosed in Col. 5 Lines 56-67 and Col. 6 Lines 1-9). By creating a list of channels in which to ignore, Duffield's method inherently only takes into consideration channels from which the user wishes to receive EDS time of day data.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combined the methods of Landis and Nishigaki with Dunfield's method for creating a list of channels the user wishes to ignore because, as disclosed by Dunfield: "[T]he user could selectively eliminate only potentially erroneous EDS data in a particular channel..." "For example, EDS information originating in one time zone while a user is in another time zone or programming that is tape delayed at the station" (as disclosed in Col. 6 Lines 21-27).

44. In regards to Claim 10, Landis teaches a method of selecting, extracting, and setting the time of day information from a video signal, but does not teach, wherein evaluating comprises determining whether the time-of-day information of each of the plurality of video signals is valid.

In a similar field of invention, Dunffield teaches a method of verifying EDS time of day data by comparing the received EDS data to the current time stored in the system clock (as disclosed in Col. 5 Lines 15-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combined channel time extraction method of Landis with the time verification method of Dunffield because "If an error is detected... EDS data recorded on [a] video tape may be the source of the error" (as disclosed by Dunffield in Col. 5 Lines 31-32). The combination of Landis and Dunffield would therefore prevent the corruption of time of day information in the system clock due to erroneous EDS time of day data that may be broadcast from a previous recording.

45. The limitations of Claim 22 have been addressed with reference to Claim 20 and Claim 5.

***Conclusion***

46. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objections made. Applicant must show how the amendments avoid such references and objections. See 37 CFR 1.111(c).

47. US Patent Number (6,433,831) Dinwiddie et al. teach a method and apparatus comprising detecting temporal information in a television signal and, upon detection, extracting the temporal information in order to set at least one clock to count time. Dinwiddie's system is capable of receiving a plurality of television signals to determine which signals contain temporal information.

48. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick A. Ryan whose telephone number is (571) 270-5086. The examiner can normally be reached on Mon to Thur, 8:00am - 5:00pm EST.

49. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Chow can be reached on (571) 272-7767. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patrick A Ryan/  
Examiner, Art Unit 4126  
Tuesday, January 22, 2008

/Dennis-Doon Chow/  
Supervisory Patent Examiner, Art Unit 4126